

116TH CONGRESS }  
*1st Session*

COMMITTEE PRINT

{ S. PRT.  
116-??

**PLAYING POLITICS WITH HUMANITARIAN  
PROTECTIONS: HOW POLITICAL AIMS  
TRUMPED U.S. NATIONAL SECURITY  
AND THE SAFETY OF TPS RECIPIENTS**

---

**A MINORITY STAFF REPORT**

PREPARED FOR THE USE OF THE

**COMMITTEE ON FOREIGN RELATIONS  
UNITED STATES SENATE**

ONE HUNDRED SIXTEENTH CONGRESS  
FIRST SESSION

NOVEMBER 07, 2019



Printed for the use of the Committee on Foreign Relations

Available via World Wide Web:  
<http://www.gpoaccess.gov/congress/index.html>

---

U.S. GOVERNMENT PUBLISHING OFFICE

??-??? PDF

WASHINGTON : 2019

---

---

**Action Memo for Secretary Tillerson from  
Acting Assistant Secretary Henshaw and  
Acting Assistant Secretary Palmieri**

*Recommendation Regarding Temporary Protected  
Status (TPS) for Honduras, Nicaragua, Haiti, and El Salvador*

---

---

ORIGINAL MEMO  
Submitted thru  
Everest.



201716812  
United States Department of State  
Washington, D.C. 20520

SENSITIVE BUT UNCLASSIFIED

October 26, 2017

## ACTION MEMO FOR THE SECRETARY

RELEASE IN PART B6

FROM: PRM – Simon Henshaw, Acting  
WHA – Francisco L. Palmieri, Acting

SUBJECT: (SBU) Recommendation Regarding Temporary Protected Status (TPS) for  
Honduras, Nicaragua, Haiti, and El Salvador

## Joint Recommendation:

(SBU) That you approve our joint recommendation to notify DHS Acting Secretary Duke that Nicaragua no longer meets the conditions required for continued designation for TPS and request that, if DHS terminates Nicaragua's TPS status, it delay the effective date for 18 months. S/P concurs with this recommendation. (Approve/Disapprove by 10/27/17). *PRM*

## PRM Recommendation:

(SBU) That you approve and sign a letter to Duke (Tab 3) recommending extension of TPS for El Salvador (18 months), Haiti (6 months), and Honduras (18 months). (Approve/Disapprove by 10/27/17).

## WHA &amp; S/P Recommendations:

(SBU) That you:

- (1) El Salvador: Approve the provided letter to Duke (Tab 1) indicating El Salvador no longer meets the conditions required for continued designation for TPS and request that, if DHS should terminate its TPS status, that it delay the effective date for 18 months. (Approve/Disapprove by 10/27/17). *PRM* *18 months PRM*
- S/P asks that you approve the provided letter to Duke (Tab 2). S/P agrees that El Salvador no longer meets the conditions required for continued designation for TPS, but believes that the letter to Duke should request a 24 rather than 36-month delay in the effective date. Although a 36-month wind down period is not precluded by the plain language of the statute, this period would be double the longest amount of time TPS status can be extended under the statute. It would put the wind down of the program directly in the middle of the 2020 election cycle. Moreover, two years should be enough time for TPS beneficiaries and their home countries to prepare for their departure, as it is very unlikely they will all return at once. (Approve/Disapprove by 10/27/17). *PRM*

- (2) Haiti: Approve the provided letter to Duke (Tab 1) indicating that Haiti no longer meets the conditions required for continued designation for TPS and request that, if DHS should terminate its TPS status, it delay the effective date for 18 months. (Approve/Disapprove by 10/27/17). *PRM* *18 months PRM*

SENSITIVE BUT UNCLASSIFIED

SENSITIVE BUT UNCLASSIFIED

-2-

- S/P asks that you approve the provided letter to Duke (Tab 2). S/P agrees that Haiti no longer meets the conditions required for continued designation for TPS, but believes that the letter to Duke should request a 24 rather than 36-month delay in the effective date. Although a 36-month wind down period is not precluded by the plain language of the statute, this period would be double the longest amount of time TPS status can be extended under the statute. It would put the wind down of the program directly in the middle of the 2020 election cycle. Moreover, two years should be enough time for TPS beneficiaries and their home countries to prepare for their departure, as it is very unlikely they will all return at once. (Approve/Disapprove by 10/27/17) *rm*
- (3) **Honduras:** Approve the provided letter to Duke (Tab 1) indicating Honduras no longer meets the conditions required for continued designation for TPS and request that, if DHS should terminate its TPS status, it delay the effective date for 36 months, and separately request that DHS delay any public notice or announcement of its Honduras decision until November 27 (one day after the Honduran presidential elections). S/P agrees with the WHA's request that DHS delay any public notice or announcement of its Honduras decision until November 27. (Approve/Disapprove by 10/27/17) *rm*
- S/P asks that you approve the provided letter to Duke (Tab 2). S/P agrees that Honduras no longer meets the conditions required for continued designation for TPS, but believes that the letter to Duke should request a 24 rather than 36-month delay in the effective date. Although a 36-month wind down period is not precluded by the plain language of the statute, this period would be double the longest amount of time TPS status can be extended under the statute. It would also put the wind down of the program directly in the middle of the 2020 election cycle. Moreover, two years should be enough time for TPS beneficiaries and their home countries to prepare for their departure, as it is very unlikely they will all return at once. (Approve/Disapprove by 10/27/17) *rm*

**Background**

(SBU) TPS for Nicaragua and Honduras will expire January 5, 2018; for Haiti January 22, 2018; and for El Salvador March 9, 2018. The DHS Secretary must review and decide whether to extend or terminate TPS designations no later than 60 days before expiration, and intends to make a decision on El Salvador, Honduras, and Nicaragua by November 3, and on Haiti by November 22. DHS requested that the Department provide a report and recommendation on whether the conditions for each country's TPS designation continue to be met and whether further extension, potential re-designation, or termination is warranted. Based on your decision, the country reports will be edited accordingly and forwarded to DHS with the appropriate cover letter.

(SBU) Should Duke terminate TPS for these countries, as many as 413,500 beneficiaries, many of whom have lived and worked in the United States for more than 20 years, as well as their U.S. citizen children, many of whom have few if any ties to these countries, will return to countries with limited economic opportunities for their reintegration. Lacking prospects for employment, many will likely fail to depart the United States in the first instance or will re-migrate illegally following their return. In the case of El Salvador and Honduras, both countries continue to have

SENSITIVE BUT UNCLASSIFIED

UNCLASSIFIED U.S. Department of State Case No. F-2017-17275 Doc No. C06512556 Date: 03/05/2019

SENSITIVE BUT UNCLASSIFIED

-3-

some of the world's highest homicide rates, and weak law enforcement capabilities and inadequate government services (e.g., education, social services) will make it difficult for the governments to protect and provide for their returning citizens – no less the U.S. citizen children who accompany their parents.

(SBU) WHA believes El Salvador, Haiti, Honduras, and Nicaragua no longer meet the conditions for continued TPS designation and that should DHS terminate TPS, it should be done with a delayed effective date of 18 months for Nicaragua and 36 months for El Salvador, Haiti, and Honduras to allow adequate time for beneficiaries to arrange their departure, for countries to prepare for reception and reintegration of their citizens, and to prevent a negative impact on the national security interests of the United States. According to WHA, in El Salvador, Honduras, and Nicaragua, the disruption in living conditions caused by natural disasters that led to their respective TPS designations should no longer be regarded as "substantial" within the meaning of the TPS statute. WHA further believes the extraordinary and temporary conditions underlying Haiti's most recent designation have sufficiently improved such that they no longer prevent nationals of Haiti from returning safely.

(SBU) PRM agrees with WHA with respect to Nicaragua but recommends that TPS be extended by 18 months for El Salvador and Honduras and six months for Haiti. In El Salvador and Honduras, PRM believes there continues to be a substantial, but temporary, disruption of living conditions, worsened by a series of subsequent natural disasters and environmental challenges that have impaired recovery efforts from the original disasters that served as the basis for designation. Both of these countries remain unable, temporarily, to handle adequately the return of their nationals. As for Haiti, extraordinary and temporary conditions continue to prevent Haitians from returning in safety. PRM does not believe there have been significant improvements in relevant country conditions since recent past extensions of TPS. In addition, PRM believes that the return over hundreds of thousands of people would destabilize the region, causing significant harm to U.S. foreign policy and national security interests. WHA concurs with PRM's assessment of potential harm to U.S. foreign policy and national security, but it nevertheless believes that conditions in El Salvador, Haiti, and Honduras no longer meet the conditions for continued designation. PRM and WHA agree that if TPS is ended for any of these countries, delayed effective termination dates are warranted.

(SBU) A DHS termination of TPS for any country will have significant foreign policy implications for the Department and United States. As a result, in the event of termination, WHA and PRM agree that a delayed effective date is essential to mitigate the negative impact on U.S. national security and foreign policy priorities in the region. It is in the U.S. national interest to provide the governments with sufficient time to improve conditions and their repatriation systems as it would reduce incentives for illegal re-immigration to the United States and ensure continued bilateral cooperation on migration and bolstering the fight against transnational criminal organizations. Additionally, while these countries are currently cooperating in accepting the repatriation of their nationals, the sudden return of tens of thousands of their citizens would overwhelm their capacity to receive deportees in El Salvador, Haiti, and Honduras. For these countries, a delayed effective date of 36 months is necessary. Nicaragua has relatively better conditions than the other three countries and a smaller population of TPS beneficiaries that will be impacted, and therefore a delayed effective date of 18 months is sufficient.

SENSITIVE BUT UNCLASSIFIED

UNCLASSIFIED U.S. Department of State Case No. F-2017-17275 Doc No. C06512556 Date: 03/05/2019

SENSITIVE BUT UNCLASSIFIED

-4-

**S/P Comment**

(SBU) The purpose of the TPS program is to provide *temporary* safe haven to foreign nationals who are in the United States when armed conflict or disaster strikes their home country. The underlying statute specifically discourages turning TPS into a pathway to permanent legal residence in the United States, as it requires a supermajority in the Senate to even consider legislation that would provide TPS recipients with permanent status. Prior administrations' consistent extension of TPS status for nationals of these countries – for more than 15 years for El Salvador, Honduras, and Nicaragua – violated the spirit and strict legal requirements of the statute, putting this administration in a very difficult position.

(SBU) PRM and WHA, as well as Under Secretary Shannon in his separate note to you, accurately describe the negative political and foreign policy implications of terminating TPS for these countries. While it is important that the Department provide such insight to DHS, it does not absolve us from operating within the statute. TPS beneficiaries and their countries of origin know that this is a temporary program governed by statute that must eventually come to an end. The treatment of the program by prior administrations as something more than temporary shelter does not change that. Another extension for any of these countries based on environmental disaster that struck more than a decade ago (slightly shorter for Haiti) is not supported by the facts on the ground and will only delay the inevitable. While the very real domestic, humanitarian, and foreign policy considerations at play may well lead Congress to reconsider the future legal treatment of long-term TPS beneficiaries – much like with respect to the Deferred Action for Childhood Arrivals (DACA) program – that is not for the Executive Branch to decide. To maintain the integrity of the program for future TPS beneficiaries and fulfill our duty to faithfully execute the law as intended by Congress, S/P agrees with WHA that the Department of State should not recommend extension for any country since the conditions on the ground in each country do not meet the legal requirements to warrant it.

(SBU) The Department should instead focus its engagement with DHS on advocating for a thoughtful and coordinated inter-agency approach to termination of the programs that seeks to mitigate the negative foreign policy impacts and foster any positive impacts of TPS beneficiaries who have lived, worked, or gone to school in the United States returning to their home countries. Such an approach should include a plan for engagement with the governments of the four countries, the TPS beneficiaries themselves, and congressional, NGO, and other stakeholders.

Attachments:

- Tab 1 – WHA – Terminating TPS
- Tab 2 – S/P – Terminating TPS
- Tab 3 – PRM – Extending TPS
- Tab 4 – PRM and WHA Assessment of the Foreign Policy Implications
- Tab 5 – Country Conditions Report for El Salvador
- Tab 6 – Country Conditions Report for Haiti
- Tab 7 – Country Conditions Report for Honduras
- Tab 8 – Country Conditions Report for Nicaragua
- Tab 9 – Overview of TPS

SENSITIVE BUT UNCLASSIFIED

UNCLASSIFIED U.S. Department of State Case No. F-2017-17275 Doc No. C06512556 Date: 03/05/2019

SENSITIVE BUT UNCLASSIFIED

-5-

Approved: PRM - Simon Henshaw, Acting [SH]  
 WHA - Francisco L. Palmieri, Acting [FLP]

Drafted: PRM/PIM - Brook Hefright, ext. 3-9209 and home/cell:

B6

Cleared: PRM/FO - Margaret Pollack (ok)  
 WHA/FO - Kenneth Merten, Acting (ok)  
 WHA/FO - John Creamer (ok)  
 PRM/PIM - Christopher Ashe (ok)  
 D - Jamie Shufflebarger (ok)  
 J - Richmond Blake (info by request)  
 P - Luis Mendez (info by request)  
 S/P - Taryn Frideres (ok)  
 L/HRR - Anna Melamud (ok)  
 L/FO - Kathleen Hook (ok)  
 WHA/CEN - Eric Sigmon (ok)  
 WHA/HSC - Allyson Bowers (ok)

SENSITIVE BUT UNCLASSIFIED

UNCLASSIFIED U.S. Department of State Case No. F-2017-17275 Doc No. C06512556 Date: 03/05/2019

---

---

**Action Memo for Secretary Tillerson from  
Acting Assistant Secretary Henshaw and  
Acting Assistant Secretary Palmieri**

*Tab 1: WHA—Terminating TPS*

---

---



UNCLASSIFIED U.S. Department of State Case No. F-2017-17275 Doc No. C06512695 Date: 03/05/2019

The Honorable  
 Elaine C. Duke  
 Acting Secretary of the Department of Homeland Security  
 Washington, DC 20528

RELEASE IN FULL

Dear Acting Secretary Duke:

I have assessed that El Salvador, Haiti, Honduras, and Nicaragua no longer meet the conditions required for continued designation for Temporary Protected Status (TPS). The disruption in living conditions in El Salvador, Honduras, and Nicaragua attributable to the environmental disasters that served as the basis for their TPS designations has decreased in severity to a degree that it may no longer be considered "substantial" within the meaning of the TPS statute. The extraordinary and temporary conditions that served as the basis for Haiti's most recent designation have sufficiently improved such that they no longer prevent nationals of Haiti from returning in safety. Enclosed are country conditions reports that provide the Department's assessment on conditions in each country as they pertain to their respective TPS designations.

Given the number of impacted beneficiaries, and to minimize any negative implications that termination would have on our bilateral relations with the countries, I recommend that, should the Department of Homeland Security (DHS) decide to terminate TPS for these countries, you do so with delayed effective dates of 18 months to allow adequate time for beneficiaries to arrange for their departure, and for countries to prepare for the reception and reintegration of their citizens and accompanying American citizen dependents.

As you consider your decision, I wish to highlight the significant foreign policy and humanitarian impact a DHS decision to terminate will have on our engagement with these countries. First and foremost, as many as 413,500 beneficiaries, many of whom have lived and worked in the United States for more than 20 years, as well as their U.S. citizen children, many of whom have few if any ties to these countries, will return to countries with limited economic opportunities for their reintegration. Lacking prospects for employment, many will likely fail to depart the United States in the first instance or will re-migrate illegally following their return. In the case of El Salvador and Honduras, both countries continue to have some of the world's highest homicide rates, and weak law enforcement capabilities and inadequate government services (e.g. education, social services) will make it difficult for the governments to protect and provide for their returning citizens – no less the U.S. citizen children who accompany their parents.

TPS termination is likely to generate a backlash from the governments themselves, particularly the Honduran and Salvadoran governments, who have agreed to engage with the United States in support of the U.S. strategy in Central America. Central American leaders are likely to assert that the large-scale re-integration of hundreds of thousands of TPS beneficiaries (and their scores of dependents) will undermine the Central America Strategy and Central America's complementary Alliance for Prosperity, both of which seek to generate prosperity for the region's citizens and reduce irregular migration to the United States. They may allege the

UNCLASSIFIED U.S. Department of State Case No. F-2017-17275 Doc No. C06512695 Date: 03/05/2019

-2-

United States is breaking with former Secretary of Homeland Security John Kelly's February 23, 2017 pledge that "there will be no mass deportations" to Central America - viewing TPS termination as a de-facto deportation effort.

Negative perceptions by populations in the TPS countries of the United States and the Administration are likely to be intense and sustained, generating significant pressure on national leaders to take actions that run counter to our long-standing national security interests and efforts to promote U.S. exports in the region. The nations could withdraw their counternarcotics and anti-gang cooperation with the United States, reduce their willingness to accept our return of their deported citizens, or refrain from efforts to control illegal migration of their citizens to our nation.

Given the large number of beneficiaries from the four countries, countries in the region and beyond the hemisphere that seek to undermine our international standing will find new fodder in our actions, likely alleging we are acting inhumanely by sending their citizens who have contributed to the American economy and broader society to crime ridden countries bereft of opportunities. Finally, the splitting of beneficiaries from their American citizen children will likely cause a backlash from communities across America and from political leaders across the spectrum.

I thank you in advance for including the Department of State's Bureaus of Western Hemisphere Affairs (WHA) and Population, Refugees, and Migration, as well as our public affairs team, in your Department's planning for the public announcement of any TPS decisions, including to foreign audiences. Additionally, I request that you provide WHA with no less than 48 hours lead time prior to the public announcement so that it can notify counterpart governments, on an embargoed basis, of the decision. I also recommend DHS delay a public announcement for Honduras until November 27, to prevent TPS issues from unduly influencing the November 26 presidential election.

Sincerely,

Rex W. Tillerson

Enclosures:  
As stated.